

AF/2623



TRANSMITTAL OF APPEAL BRIEF (Large Entity)

Docket No.
ITL.0367US

ifw

Be Application Of: David B. Kinder, et al.

| Application No. | Filing Date | Examiner | Customer No. | Group Art Unit | Confirmation No. |
|-----------------|--------------|------------|--------------|----------------|------------------|
| 09/575,076 | May 19, 2000 | Ngoc K. Vu | 21906 | 2623 | 1607 |

Invention: Web Site Load Management

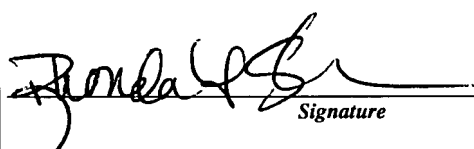
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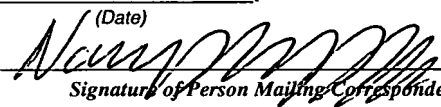
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Dated: June 8, 2007

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:

David B. Kinder, et al.

Serial No.: 09/575,076

Filed: May 19, 2000

For: Web Site Load Management

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Art Unit: 2623

Examiner: Ngoc K. Vu

Atty Docket: ITL.0367US
(P8586)

Assignee: Intel Corporation

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SECOND APPEAL BRIEF

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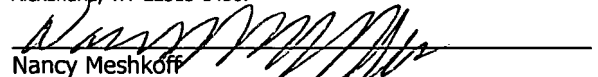

Nancy Meshkoff

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REAL PARTY IN INTEREST

The real party in interest is the assignee Intel Corporation.

RELATED APPEALS AND INTERFERENCES

Appeal No. 2004-1444, decision mailed on January 31, 2005, in Application No. 09/574,849.

Appeal Brief filed on July 24, 2006 in Application No. 09/574,851.

STATUS OF CLAIMS

Claim 1 (Rejected).

Claim 2 (Canceled).

Claims 3-11 (Rejected).

Claims 12-13 (Canceled).

Claims 14-26 (Rejected).

Claim 27 (Canceled).

Claims 1, 3-11, and 14-26 are rejected and are the subject of this Appeal Brief.

STATUS OF AMENDMENTS

All amendments have been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

In the following discussion, the independent claims are read on one of many possible embodiments without limiting the claims:

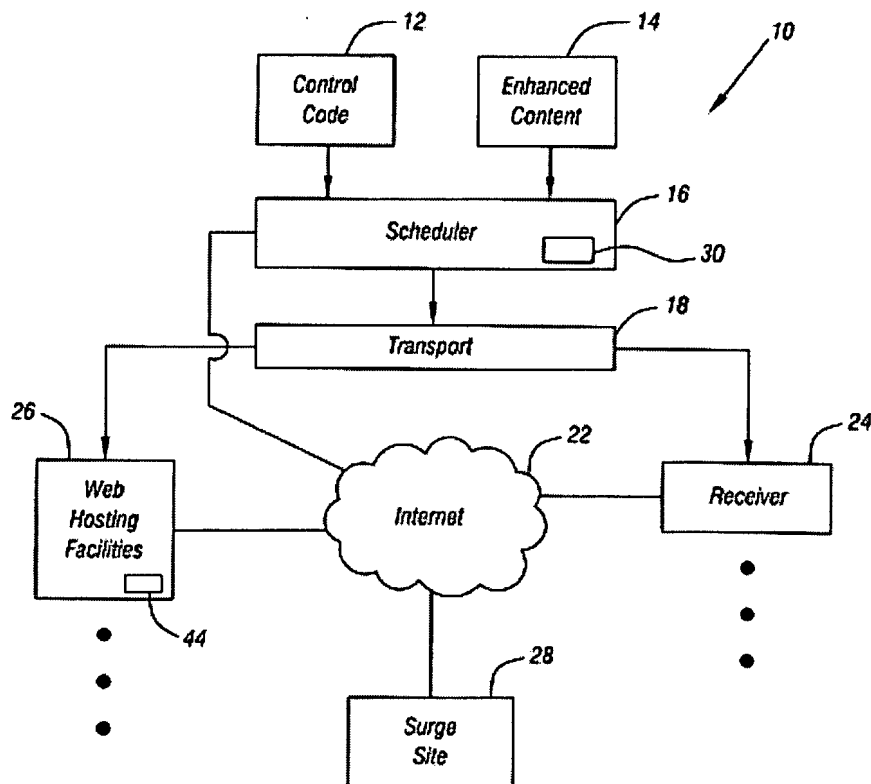


FIG. 1

1. A method comprising:

sending, to a web site hosting facility, scheduling information about when a uniform resource locator will be transmitted, sufficiently before video information containing said uniform resource locator is distributed to a receiver of said uniform resource locator and video information to enable the facility to prepare for an increased access load (Figure 1 at 16, 18, 22, 24, and 26; Figure 2 at 30, 32, 34, 36, 38, 40, and 42; Specification at page 6, line 1-page 7, line 22); and

transmitting said video information in the form of television programming to a plurality of receivers and said web site hosting facility (Specification, page 3, line 16-page 5, line 26, page 6, line 23-page 7, line 11, and page 7, line 23-page 8, line 11; Figure 1 at 16, 18, 24, and 26, Figure 2 at 40, 42).

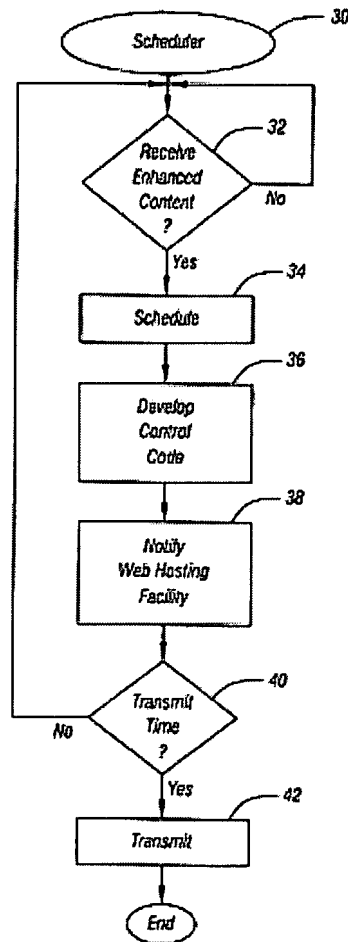


FIG. 2

11. A computer-readable medium storing instructions that, when executed, enable a processor-based system to:

send, to a web site hosting facility, scheduling information about when a uniform resource locator will be transmitted together with video information to a plurality of receivers, sufficiently before said video containing said uniform resource locator is distributed to said receivers to enable the web hosting facility to prepare for a potentially increased access load (Figure 1 at 16, 18, 22, 24, and 26; Figure 2 at 30, 32, 34, 36, 38, 40, and 42; Specification at page 6, line 1-page 7, line 22); and

transmit television programming including said video information to a plurality of receivers, one receiver including the web site hosting facility (Specification, page 3, line 16-page 5, line 26, page 6, line 23-page 7, line 11, and page 7, line 23-page 8, line 11; Figure 1 at 16, 18, 24, and 26, Figure 2 at 40, 42).

21. A system comprising:
a video distribution device (Figure 1 at 15; Specification at page 3, line 16-page 4, line 4);
a transport coupled to said video distribution device to distribute video to a plurality of receivers (Figure 1 at 16, 18, and 24; Specification at page 3, line 16-page 4, line 4);
and
storage coupled to said device, said storage storing instructions that enable said device to send scheduling information to a web site hosting facility sufficiently in advance of video containing a uniform resource locator being distributed to a plurality of receivers to enable the web hosting facility to prepare for a potentially increased access load in response to the distribution of said video (Figure 2 at 38, 42; Specification at page 6, line 23-page 7, line 2), said web site hosting facility other than said plurality of receivers (Figure 1 at 26 and 24), and said instructions to enable said device to transport said video containing said uniform resource locator to said web site hosting facility and said receivers (Figure 1 at 16, 18, 24, and 26; Figure 2 at 40, 42; Specification at page 4, line 5-page 5, line 26, page 6, line 23-page 7, line 11, and page 7, line 23-page 8, line 11).

At this point, no issue has been raised that would suggest that the words in the claims have any meaning other than their ordinary meanings. Nothing in this section should be taken as an indication that any claim term has a meaning other than its ordinary meaning.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- A. Whether claims 1, 3-11, and 14-26 fail to comply with the written description requirement under 35 U.S.C. § 112, first paragraph.**
- B. Whether claims 1, 3-11, and 14-26 fail to comply with the enablement requirement under 35 U.S.C. § 112, first paragraph.**

ARGUMENT

A. Do claims 1, 3-11, and 14-26 fail to comply with the written description requirement under 35 U.S.C. § 112, first paragraph?

Claims 1, 3-11, and 14-26 stand rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. Claim 1, for example, recites transmitting video information in the form of television programming to a plurality of receivers and a web site hosting facility. The examiner contests whether the specification supports transmitting video information to a web site hosting facility. It is respectfully submitted that this limitation is supported by the specification.

The written description must be in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention. *See, e.g., Moba B.E. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1319, 66 U.S.P.Q. 2d 1429, 1438 (Fed. Cir. 2003). Support does not have to be express; it may be implicit or inherent. MPEP § 2163. Furthermore, there is no *in haec verba* requirement. *Id.*

In the background section of the disclosure, a circumstance is described where a web server might fail. For example, if a uniform resource locator (URL) is provided in a widely broadcast television advertisement, a large number of viewers may *see* the advertisement at the same time and they may attempt to simultaneously access the web site. If the number of viewers attempting to access the web server is excessive, the web server may fail, making it impossible for a large number of potential customers to access the desired information. Specification, page 2, lines 3-13.

This problem is especially acute in systems that broadcast *television programming* together with enhanced content such as URLs. For example, if this type of broadcast is received on a set-top box, *viewers* may be able to mouse click on the URL to try to immediately access the associated web server. Thus, in this situation, the possibility of web site server failure is even more prominent. Specification at page 2, line 14-page 3, line 3.

From the examples in the background section, it is clear that people *see* or *view* the URLs and the *television programming*, which may include advertisements. Because the viewers *see* the television programming (and the ancillary data), it is video content or information. In fact, the examiner concedes that video information in the form of television programming is

transmitted to a plurality of receivers as the rejection is solely based on the lack of support for receiving video information at *a web site hosting facility*. Paper No. 20060522, pages 4-5. Thus, there is no question that video information in the form of television programming may be sent to and received by a plurality of receivers.

The same information that is sent to the receivers can also be sent to a web site hosting facility. For example, in an embodiment of the present invention a scheduler 16 stores software 30 that transmits content at a given transmission time. *See, e.g.*, specification, page 7, line 23-page 8, line 2; Figure 2 at 40 and 42. The transmitted content may include *programming*, ancillary data, *and* control codes. *See, e.g.*, specification, page 8, lines 1-2. The content may be transmitted over transport 18, which may be a transport for providing *television content* such as airwave broadcast systems, satellite transmission systems, and cable distribution systems. *See, e.g.*, specification, page 6, line 23-page 7, line 11. As is shown in Figure 1, the content may be transmitted over transport 18 to receivers 24 such as television receivers. Notably, content may also be transmitted over transport 18 to the web hosting facilities. *Id.* *See also* Figure 1; specification, page 4, line 19-page 5, line 17. Based on this alone it is clear that the inventor had possession of the claimed invention.

Additionally, in one embodiment, the control code 12 may be included in the *vertical blanking interval* or closed caption stream of an analog broadcast. *Id.* It is well known that the vertical blanking interval is the part of the television signal that is sent between each video frame. Computer Desktop Encyclopedia, © 1981-2005, the Computer Language Company, Inc., version 18.2, second quarter 2005. (“Vertical blanking interval[:] The part of a TV signal that is sent between each video frame. In North American TV (NTSC), the vertical blanking interval (VBI) takes up the last 45 lines of each 525-line frame.”) As the examiner asserts that information from the control code is a warning and the specification indicates that the control code can be included in an analog broadcast, it is respectfully submitted that for this additional reason the specification supports transmitting video information in the form of television programming to a web site hosting facility. Indeed, the control code may be parsed from the programming information. Specification, page 8, lines 7-11.

But the specification provides support for more than one embodiment. For example, as is explained above, the scheduler 16 transmits content over a transport 18 to a plurality of receivers. And the *same* content (*e.g.*, programming information and ancillary data) is

communicated to the web hosting facility 26 over transport 18. *See, e.g.*, specification, page 4, line 19-page 5, line 2. Thus, the web hosting facility may receive a *last* warning that a URL (which may be contained in the television programming) *has been* broadcast to a large number of receivers, and that a large number of attempted accesses to the URL (hosted by the facility) may be *imminent*. *Id.*

In sum, the following is believed to be supported by the specification: (1) The scheduler can transmit content including television programming (which includes video), ancillary data, and control codes over transport 18; (2) transport 18 can be a conventional transport for providing television content to receivers such as television receivers; (3) the scheduler 16 can also transmit the same content (*e.g.*, television programming, ancillary data, and control codes) to the web site hosting facility over the transport 18 as a last warning to the web hosting facility that the URL has been broadcast.

The examiner asserts that television programming information that is sent to the web site hosting facility is devoid of video; it lacks video information. No basis for this assertion could be found in the specification. For example, when content is transmitted from the scheduler 16 via transport 18 it may include the programming, ancillary data, *and* the control codes—it may include all three items. Furthermore, the *same* content can be communicated to the receivers 24 and the web site hosting facility. Specification, page 4, lines 5-25. As the content that is transmitted includes programming *and* control codes, and the control codes are used by the web site hosting facility, it is submitted that television programming *information* that is sent to the web site hosting facility includes the *programming* or video portion of the signal as part of the information.

For at least these reasons, reversal of the rejections of claim 1 and claims dependent thereon is requested.

Under a similar analysis, reversal of the rejections of claims 11 and 21 and their respective dependent claims is requested.

B. Do claims 1, 3-11, and 14-26 fail to comply with the enablement requirement under 35 U.S.C. § 112, first paragraph?

Claims 1, 3-11, and 14-26 also stand rejected as failing to comply with the enablement requirement. The examiner asserts that the claims are not enabled because the specification does

not describe, for example, transmitting video information in the form of television programming to a web site hosting facility (as is indicated in claim 1) in such a way as to enable one skilled in the art to make and/or use the invention. It is believed that the claims are clearly enabled.

For example, with respect to claim 1, a scheduler 16 transmits content over a transport 18. Figure 1; specification, page 7, line 1-page 8, line 2. This content may include programming such as television programming, ancillary data, and control codes. *Id.* See also specification, page 3, lines 16-23. The transport 18 is a conventional transport for providing television content. The transport 18 may communicate with both television receivers and the web site hosting facility. See Figure 1; see also specification, page 4, line 5-page 5, line 26; page 8, lines 3-11. Because the scheduler 16 can transmit television programming for transport over a conventional transport (*e.g.*, 18) for providing television content and because this conventional transport can communicate with the web hosting facility, it is submitted that claim 1 and claims dependent thereon are enabled.

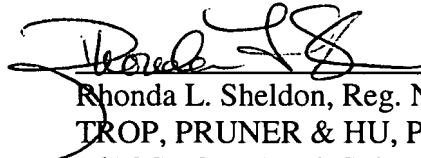
For similar reasons the remaining claims are also enabled. Reversal of the rejections is requested.

Conclusion

Applicant respectfully requests that each of the rejections be reversed and that the claims subject to this Appeal be allowed to issue.

Respectfully submitted,

Date: June 8, 2007


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CLAIMS APPENDIX

The claims on appeal are:

1. A method comprising:
sending, to a web site hosting facility, scheduling information about when a uniform resource locator will be transmitted, sufficiently before video information containing said uniform resource locator is distributed to a receiver of said uniform resource locator and video information to enable the facility to prepare for an increased access load; and
transmitting said video information in the form of television programming to a plurality of receivers and said web site hosting facility.
3. The method of claim 1 wherein sending scheduling information includes sending said scheduling information with said television programming and ancillary data.
4. The method of claim 1 wherein transmitting television programming includes transmitting said programming with ancillary data over a transport and sending said scheduling information over said transport.
5. The method of claim 4 further including sending said scheduling information at a different time than said television programming.
6. The method of claim 1 further including sending said scheduling information over a first transport and sending said television programming over a second transport.
7. The method of claim 6 wherein sending said scheduling information includes sending said scheduling information over the Internet and sending said television programming over a broadcast transport.
8. The method of claim 1 including transmitting television programming and ancillary data.

9. The method of claim 8 including automatically sending said scheduling information to said web site hosting facility.

10. The method of claim 9 including automatically sending said scheduling information in two independent ways to said web site hosting facility.

11. A computer-readable medium storing instructions that, when executed, enable a processor-based system to:

send, to a web site hosting facility, scheduling information about when a uniform resource locator will be transmitted together with video information to a plurality of receivers, sufficiently before said video containing said uniform resource locator is distributed to said receivers to enable the web hosting facility to prepare for a potentially increased access load; and
transmit television programming including said video information to a plurality of receivers, one receiver including the web site hosting facility.

14. The medium of claim 11 further storing instructions that cause a processor-based system to transmit said programming with ancillary data over a transport and send said scheduling information over said transport.

15. The medium of claim 14 further storing instructions that cause a processor-based system to send said scheduling information at a different time than said television programming.

16. The medium of claim 11 further storing instructions that cause a processor-based system to send said scheduling information over a first transport and send said television programming over a second transport.

17. The medium of claim 16 further storing instructions that cause a processor-based system to send said scheduling information over the Internet and send said television programming over a broadcast transport.

18. The medium of claim 11 further storing instructions that cause a processor-based system to transmit television programming with ancillary data.

19. The medium of claim 18 further storing instructions that cause a processor-based system to automatically send said scheduling information to said web site hosting facility.

20. The medium of claim 19 further storing instructions that cause a processor-based system to automatically send said scheduling information in two independent ways to said web site hosting facility.

21. A system comprising:
a video distribution device;
a transport coupled to said video distribution device to distribute video to a plurality of receivers; and
storage coupled to said device, said storage storing instructions that enable said device to send scheduling information to a web site hosting facility sufficiently in advance of video containing a uniform resource locator being distributed to a plurality of receivers to enable the web hosting facility to prepare for a potentially increased access load in response to the distribution of said video, said web site hosting facility other than said plurality of receivers, and said instructions to enable said device to transport said video containing said uniform resource locator to said web site hosting facility and said receivers.

22. The system of claim 21 wherein said distribution device is coupled to said web hosting facility through the Internet and instructions stored in said storage cause said device to automatically notify said web site hosting facility over the Internet before video which includes a uniform resource locator is distributed to said receivers.

23. The system of claim 21 including two transports coupled between said video distribution device and said web site hosting facility.

24. The system of claim 23 wherein instructions stored on said storage cause said video distribution device to automatically notify the web hosting facility over two different transports when a universal resource locator will be transmitted with said video distributed to said receivers.

25. The system of claim 21 wherein said video distribution device schedules video programming for distribution to said plurality of receivers.

26. The system of claim 25 wherein said video distribution device transmits programming with ancillary data.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

See Decision on Appeal No. 2004-1444, mailed on January 31, 2005, in Application No. 09/574,849.

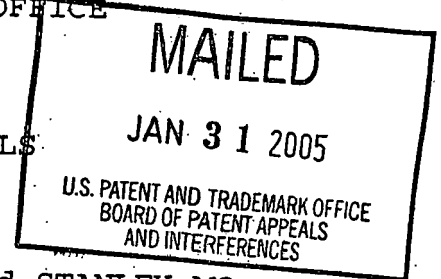
ITL 0374US
P 8593

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte DAVID B KINDER, LINDA B WELSH, and STANLEY MO

Appeal No. 2004-1444
Application No. 09/574,849

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Trop, Pruner, & Hu, P.C.

ON BRIEF

Before THOMAS, KRASS, and JERRY SMITH, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-29, which constitute all the claims in the application.

Mail Date 1-31-05
Due Date 3-31-05
Act. Req. req. for reconsideration/
appeal to d. of appeals

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TPHD ☒

TPHA ☐

ITLD ☒

Appeal No. 2004-1444
Application No. 09/574,849

The disclosed invention pertains to a method and apparatus for automatically delaying an access request to a web server in order to prevent overloading the web server.

Representative claim 1 is reproduced as follows:

1. A method comprising:

receiving in a first unit of a processor-based system a request from a second unit of the processor-based system to access a web server;

replying from said first unit to said second unit to said request; and

automatically delaying accessing the web server to prevent overloading the web server.

The examiner relies on the following references:

| | | |
|--------------------------|-----------|-----------------------|
| Phaal | 6,006,269 | Dec. 21, 1999 |
| Zigmond et al. (Zigmond) | 6,330,719 | Dec. 11, 2001 |
| | | (filed June 30, 1999) |
| Weber | 6,424,993 | July 23, 2002 |
| | | (filed May 26, 1999) |

Claims 1-3, 8, 9, 12-17, 19, 22-25 and 27-29 stand rejected under 35 U.S.C. § 102(e) as being anticipated by the disclosure of Zigmond. Claims 4-7, 10, 11, 18 and 26 stand rejected under 35 U.S.C. § 103(a). As evidence of obviousness the examiner offers Zigmond and Phaal with respect to claims 4-7, 10 and 11, and Zigmond and Weber with respect to claims 18 and 26. We note that the examiner's rejections do not include claims 20 and 21. Since claims 20 and 21 include limitations similar to other claims on appeal, we assume that the failure to list claims

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20 and 21 in the rejections was an inadvertent oversight by the examiner. We also note that appellants have indicated that claims 20 and 21 are rejected and are on appeal.

Rather than repeat the arguments of appellants or the examiner, we make reference to the brief and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the brief along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied on by the examiner supports each of the examiner's rejections. Accordingly, we affirm.

We consider first the rejection of claims 1-3, 8, 9, 12-17, 19, 22-25 and 27-29 under 35 U.S.C. § 102(e) as being anticipated by the disclosure of Zigmond. Appellants have indicated that the claims subject to this rejection may be placed in two groups. The first group consists of claims 1, 2, 8, 9,

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12-14, 16, 17, 19, 22-24 and 27-29, and the second group consists of claims 3, 15 and 25 [brief, page 8]. Therefore, we will consider the rejection with respect to claims 1 and 3 only.

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

The examiner has indicated how he reads the invention of claim 1 on the disclosure of Zigmond [answer, pages 3-4]. Appellants argue that there is no replying from the request receiving first unit to the request generating second unit in Zigmond. Appellants argue that the portion of Zigmond relied on by the examiner fails to support the examiner's findings of anticipation [brief, pages 8-9]. The examiner responds that a request identifier is returned in response to a queue request in Zigmond [answer, page 10].

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We will sustain the examiner's rejection of independent claim 1 and of the other claims grouped therewith. Although the examiner's rejection and the portions of Zigmond relied on by the examiner are not as clear as they could be, we agree with the examiner that Zigmond discloses the claimed invention. We find that browser 301 of Zigmond sends a request to page 305 which includes information about a web page including accessing delays. Script 306 and deferrer object 302 receive this request and, if a delay is required, the information is returned to browser 301 and stored in queue so that the access can be delayed and overloading of the web server can be avoided. Thus, the browser in Zigmond requests access to a web server from script 306 and deferrer object 302, and these units generate a reply to the browser by placing a response in the queue. We find that this operation of Zigmond fully meets the invention as broadly recited in claim 1.

With respect to separately argued claim 3, appellants argue that nothing within the portion of Zigmond cited by the examiner has anything to do with a uniform resource locator (URL) that includes delay information within the URL itself [brief, pages 9-10]. The examiner responds that the URL disclosed in Zigmond includes a delay instruction (deferred) indicating that the server should be delayed as claimed [answer, page 11].

Appeal No. 2004-1444
Application No. 09/574,849

We will sustain the examiner's rejection of claims 3, 15 and 25. We agree with the examiner that Zigmond discloses receiving a URL which includes instructions (deferred?) indicating that access to the server should be delayed.

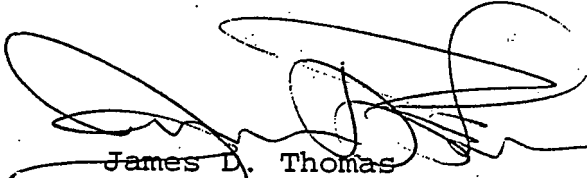
We now consider the rejection of claims 4-7, 10, 11, 18 and 26 under 35 U.S.C. § 103(a). In our view, the examiner's findings and analysis in support of this rejection are sufficient to have established a prima facie case of obviousness. Appellants have not made any arguments directed to this rejection. In fact, appellants have indicated that these claims should stand or fall with the claims rejected under 35 U.S.C. § 102. Since the examiner has established a prima facie case of the obviousness of these claims, and since appellants have offered no arguments in rebuttal, we sustain the examiner's rejection of these claims.


In summary, we have sustained each of the examiner's rejections of the claims on appeal. Therefore, the decision of the examiner rejecting claims 1-29 is affirmed.

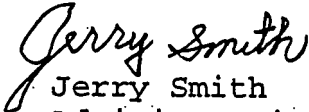
Appeal No. 2004-1444
Application No. 09/574,849

No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

AFFIRMED


James D. Thomas
Administrative Patent Judge


Errol A. Krass
Administrative Patent Judge


Jerry Smith
Administrative Patent Judge

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